LAWRENCE V. ROBERTSON, JR.

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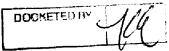
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AZ CORP COMMISSION DOCKET CONTROL



IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF THE PROPERTIES OF TUCSON ELECTRIC POWER COMPANY DEVOTED TO ITS OPERATIONS THROUGHOUT THE STATE OF ARIZONA AND FOR RELATED APPROVALS.

DOCKET NO. E-01933A-15-0322

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JUN 24 2016

ARIZONA CORP COMMISSION 400 W. CONGRESS - STE 218 TUCSON, AZ 85701

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS 2016 RENEWABLE **ENERGY STANDARD AND TARIFF** IMPLEMENTATION PLAN.

DOCKET NO. E-01933A-15-0239

NOBLE AMERICAS ENERGY SOLUTIONS, LLC REPLY BRIEF

I. INTRODUCTION.

Noble Americas Energy Solutions, LLC ("Noble Solutions") originally was not an intervener in the Commission's proceeding that was established to consider Tucson Electric Power Company's ("TEP") 2016 Renewable Energy Standard Implementation Plan ("REST Plan"), which has been docketed as Docket No. E-01933A-15-0239. However, on December 29, 2015, Noble Solutions was granted intervener status in the Commission's proceeding that was established to consider TEP's 2015 Rate Increase Application ("Rate Case"), which has been docketed as Docket No. E-01933A-15-0322. Thereafter, by a Procedural Order dated April 6, 1

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2016, the Commission consolidated the REST Plan and the Rate Case proceedings. consequence, Noble Solutions now has intervener status in the consolidated proceedings. It is on the basis of that status that Noble Solutions submits this Reply Brief.

In this Reply Brief, Noble Solutions does not intend to address the questions of (i) whether TEP's proposed expansion of its current TORS Program and propsed new RCS should be approved, and, (ii) if so, what rate(s) should be established in connection with such approval(s). Noble Solutions does not have a position on the merits of either of those issues as of this point in time. Rather, in this Reply Brief, Noble Solutions addresses as a policy matter whether the Commission should be addressing and resolving either issue at this juncture within the context of the aforementioned consolidated proceeding. In that regard, it is Noble Solution's position that the Commission should not.

II. DISCUSSION.

In its June 10, 2016 Initial Post Hearing Brief, TEP makes the following observations and statements in support of its arguments that its proposed TORS Program expansion and proposed new RCS should be approved: "These proposed programs will expand customer choice and promote competition..." thereby "...retaining competitive power prices ..." [page 1, lines 12-13 and 16, respectively] "Fundamentally, this case is about customer choice ..." and "Customers should have the choice to select the offering that best suits them." |page 2, lines 3 and 12-13, respectively] "...indeed, 'improving customer choice is procompetitive" [page 3, lines 15-16, citation omitted]

In connection with the foregoing, the irony of TEP making these observations and statements in support of its TORS and RCS proposals in the very same consolidated proceeding in which it is opposing a "buy-through" program for large commercial and industrial customers on its system, which would offer these very same "customer choice" and "competitive power price"

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opportunities to those customers, must be noted! More importantly, the regulatory policy implications associated with the concepts of "customer choice" and "competitive power price" opportunities underscore the fact that resolution of the aforementioned question as to whether the proposed TORS Program expansion and proposed new RCS should be approved is not appropriate for a determination by the Commission at this juncture in the instant consolidated proceeding. To the contrary, the "customer choice" and "competitive power price" policy concepts underlying such a determination and whether or not approval would be in the "public interest" are the same as those presented to the Commission with the question of whether or not a "buy-through" program should be approved for TEP's system. In that regard, the evidentiary record on that latter question is in the initial stages of development through the filing of prepared testimony, with several more rounds of filings and a hearing yet to occur in this consolidated proceeding.

In addition, and with respect to the public policy concepts of "customer choice" and "competitive power prices" as the same pertain to the provision of electric generation service in Arizona, Noble Solutions takes issue with the seeming contention of the Commission Staff in its June 10, 2016 Opening Brief that the public policy declaration set forth in A.R.S.40-202(B) has been mooted or emasculated by reason of the Phelps Dodge decision and the absence of any subsequent rulemaking activity by the Commission to address certain defects in the Commission's Retail Electric Competition Rules (Rules) identified by the Arizona Court of Appeals in that decision. To the contrary, Noble Solutions believes that (i) the Commission has the ability to address and avoid those defects through the manner in which it (a) conducts proceedings, (b) renders findings of fact and conclusions of law and (c) prescribes related compliance conditions in individual applicantspecific proceedings and decisions, without the necessity of further rulemaking, and (ii) competition for the provision of electric generation service can occur in effect at the retail level in forms other than the specific form contemplated by the Rules.

III. CONCLUSION.

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Based upon the foregoing discussion, Noble Solution submits that the appropriate course of action is for the Administrative Law Judge assigned to the instant consolidated proceeding to issue an order providing that a decision on the questions of (i) whether TEP's proposed TORS Program expansion and proposed new RCS should be approved, and, (ii) if so, what rate(s) therefor are to be established, should be deferred until a final decision is rendered in TEP's Rate

Dated this 23rd day of June, 2016.

Lawrence V. Robertson Jr.

Attorney for Noble Americas Energy Solutions, LLC